

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA, 1928

Crl.MC.No. 3886 of 2006()

CC.145/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT,
KODUNGALLUR
.....

PETITIONER: COMPLAINANT:

MURUKESAN, S/O.KANDACHAN,
AGED 41 YEARS, POZHANKAVU GOTHURUTHIL,
PANANGAD DESOM, SREE NARAYANAPURAM VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.V.M.KRISHNAKUMAR

RESPONDENTS: STATE:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

ADDL.:

2. PRABHAKARAN,
POLICE SUB INSPECTOR,
MATHILAKAM POLICE STATION,
MATHILAKAM.
3. P.C.4434,
MATHILAKAM POLICE STATION.
4. P.C.3650, MADHAVAN,
MATHILAKAM POLICE STATION.
5. VIJAYAN,
POLICE CONSTABLE,
MATHILAKAM POLICE STATION.
6. JOSEPH,
POLICE CONSTABLE,
MATHILAKAM POLICE STATION.

7. ANTONY, P.C.3171,
MATHILAKAM POLICE STATION.

ADDITIONAL R2 TO R7 IMPEADED AS PER ORDER
DATED 14/12/2006 IN CRL.M.A.NO.7151/06.

BY PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

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Dated this the 1st day of January, 2007

ORDER

The grievance of the petitioner is that C.W.6 – a Medical Officer, who had allegedly examined him and treated him, has not been examined by the learned Magistrate, though he was cited as a witness. He was not examined at the stage of the prosecution evidence. Subsequently, an application was filed to recall C.W.6. Even thereafter, he has not been examined. This, in short, is the grievance raised by the petitioner – the complainant.

2. The accused persons are police officials and the allegation of the petitioner is that he was illegally assaulted and tortured by the accused persons.

3. The respondents have been served through their counsel who appeared before the court below. They have not chosen to enter appearance. The learned counsel for the petitioner submits that examination of C.W.6 is absolutely essential for a proper disposal of the complaint filed by the petitioner. The learned Magistrate erred grossly in not

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summoning C.W.6 and in not ensuring the presence of the witness. Even assuming that the complainant had not taken necessary steps, this was certainly a fit case where the powers under Sec.311 of the Cr.P.C. should have been invoked and insistence must have been made on the examination of C.W.6.

4. A report of the learned Magistrate was called for. I have perused the report dated 19/12/2006.

5. I have no hesitation to agree with the learned counsel for the petitioner that for a fair, proper and just disposal of the complaint filed by the petitioner, the learned Magistrate must have insisted on examination of C.W.6. The learned counsel for the petitioner undertakes to take all necessary steps.

6. I am, in these circumstances, satisfied that the learned Magistrate must be directed to examine C.W.6. The petitioner shall take all necessary steps within a period of 10 days from this date. The learned Magistrate shall thereafter insist and ensure that C.W.6 is examined as a witness in the case. Needless to say that procedure, in accordance with law, will have to be followed after so examining C.W.6.

7. This Crl.M.C. is accordingly allowed to the extent

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indicated above.

8. Hand over a copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge